

MORRISON & FOERSTER LLP EX PARTE OR LATE FILED

SAN FRANCISCO
LOS ANGELES
SACRAMENTO
ORANGE COUNTY
PALO ALTO
WALNUT CREEK
DENVER

ATTORNEYS AT LAW

2000 PENNSYLVANIA AVENUE, NW
WASHINGTON, D.C. 20006-1888
TELEPHONE (202) 887-1500
TELEFACSIMILE (202) 887-0763

NEW YORK
LONDON
BRUSSELS
BEIJING
HONG KONG
SINGAPORE
TOKYO

March 11, 1999

Writer's Direct Contact

(202) 887-1510

ctritt@mofo.com

By Messenger

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
The Portals
445 12th Street, S.W.
Washington, D.C. 20554

RECEIVED
MAR 11 1999
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: **EX PARTE**
File No. 188-SAT-LOI-97;
ET Docket No. 95-18; ✓
RM-9328

Dear Ms. Salas:

Representatives of ICO Global Communications, ("ICO") and the ICO USA Service Group ("IUSG"), held five meetings on March 9, 10, and 11, 1999 with Commission staff to discuss the importance of integrating the Commission's licensing and service rules for 2 GHz mobile satellite services ("MSS") with its 2 GHz relocation policies.¹

¹ On March 9, 1999, Francis Coleman and the undersigned, on behalf of ICO and Norman Leventhal, on behalf of IUSG held a telephone conference with Ari Fitzgerald, legal advisor to Chairman Kennard, and Mindy Ginsburg, Karl Kensinger, and Chris Murphy of the International Bureau. On March 10, 1999, Bob Phillips, Francis Coleman, and the undersigned, on behalf of ICO and Norman Leventhal, on behalf of IUSG met with Dan Connors, acting legal advisor to Commissioner Ness and Peter Tenhula, legal advisor to Commissioner Michael Powell. On March 11, 1999, Bob Phillips, Francis Coleman, and the undersigned, on behalf of ICO met with Paul Misener, chief of staff and senior legal advisor to Commissioner Furchtgott-Roth. On March 11, 1999, Bob Phillips, Francis Coleman, and the undersigned, on behalf of ICO and Norman Leventhal, on behalf of IUSG held a telephone conference with Karen Gulick, legal advisor to Commissioner Tristani.

No. of Copies rec'd 0+6
List A B C D E

MORRISON & FOERSTER LLP

Ms. Magalie Roman Salas


March 11, 1999

Page Two

The parties also urged the FCC to retain a neutral stance in presenting the various options for 2 GHz MSS licensing and service rules for public comment. The parties otherwise restricted their discussion to comments and replies filed in the 2 GHz Third Notice of Proposed Rule Making in ET Docket No. 95-18 and the attached documents.

Six copies of this letter, two for each of the above-cited proceedings, have been submitted to the Secretary of the Commission for inclusion in the public record, as required by Section 1.1206(b)(2) of the Commission's rules.

Sincerely,

A handwritten signature in cursive script that reads "Cheryl A. Tritt/gb".

Cheryl A. Tritt

Counsel for ICO Global Communications

Attachments

cc: Ari Fitzgerald w/attachments
Daniel Connors w/o attachments
Peter Tenhula w/o attachments
Paul Misener w/o attachments
Karen Gulick w/o attachments
Mindy Ginsburg w/attachments
Karl Kensinger w/attachments
Christopher Murphy w/attachments

TALKING POINTS

2 GHz Mobile Satellite Service Licensing and Service Rule Proceeding

1. ICO/ICO U.S. Service Group Objective

- Impartial 2 GHz MSS licensing and service rule NPRM

2. Proposed FCC Goals for 2 GHz MSS Licensing and Service Rule Proceeding

- Acknowledge disparate MSS system development stages; accommodate some systems' need for early market entry.
- Must be compatible with terrestrial incumbent relocation policies.
- Minimize disruption of incumbent 2 GHz licensees.
- Assure entry of later 2 GHz MSS entrants.

3. The ICO/IUSG Integrated Plan Achieves the Commission's Goals

- See attached copy of Integrated Plan

4. No Other 2 GHz MSS Licensing Option Achieves These Goals

- *A priori* band planning:
 - a. requires industry consensus that is impossible to achieve in the near term.
 - b. is inefficient and wasteful, in that the approach either under-or over-assigns spectrum.
 - c. is incapable of reflecting the final configuration of any MSS system.
 - d. will cause premature dislocation and/or relocation of incumbents.
 - e. will require premature, and, in many cases, unnecessary, relocation expenditures by MSS licensees.
 - f. will force MSS systems into premature intersystem coordination, which will likely require the operators of as-yet-unbuilt satellite systems to design those systems to conform to an FCC band plan, rather than to market demands.
 - g. will require band plan and system modifications as licensees modify their designs.
 - h. does not effectively encourage competition because the small amount of spectrum licensed to each system will discourage financial investment.
- These factors require the Commission to adopt a neutral 2 GHz licensing and service rule NRPM that does not favor a specific licensing option.

EUROPEAN REGULATORY FRAMEWORK FOR GMPCS SERVICE AND USE OF THE 2GHz MSS BANDS

March 1999

The European Radiocommunications Committee ("ERC") and the European Committee for Telecommunications Regulatory Affairs ("ECTRA"), committees of the Conference of European Posts and Telecommunications ("CEPT"), prepared a framework for facilitating GMPCS service in Europe ("CEPT Regulatory Framework"). In Europe GMPCS is known as "Satellite Personal Communications Services" or "S-PCS".

The CEPT Regulatory Framework addressed, inter alia, the following:

- (1) S-PCS operations in the bands 1610 – 1626.5 MHz, 2483.5 – 2500 MHz, 1980 – 2010 MHz, and 2170 – 2200 MHz MSS bands (In this note, "S-PCS system" means a S-PCS system operating in any of these bands);
- (2) Transition arrangements for fixed service in the bands 1980 – 2010 MHz and 2170 – 2200 MHz;
- (3) Free circulation of S-PCS terminals operating in the bands mentioned in (1) above, and
- (4) Service authorization provisions for those S-PCS systems.

In advance of establishing this CEPT Regulatory Framework, both the ERC, the ECTRA, and individual governments established consultative processes with the industry to ensure full representation of industry views. Industry from both sides of the Atlantic took part in the ERC, ECTRA, and national deliberations. Participating companies included:

Iridium USA	Vodafone (for Globalstar)
Telespazio (for Iridium)	DASA (for Globalstar)
Cable & Wireless (for Iridium)	Tesam (for Globalstar)
Odyssey	ICO
Inmarsat	

The CEPT Regulatory Framework contains the European frequency plan for S-PCS services. As part of the ERC and ECTRA committee deliberations, this European frequency plan was accepted and approved by all participating companies, including those noted above. The plan included the following important points:

- The European frequency plan should be limited to those S-PCS systems to be brought into operation before January 1, 2001;
- The European frequency plan should include stated (i.e. requested) bandwidth requirements for all S-PCS systems to be brought into operation before January 1, 2001;
- A milestone process was established to deal with paper satellites and to monitor that S-PCS systems meet established milestones.

The CEPT Regulatory Framework also included the following provisions for future S-PCS systems:

- **To include new (i.e. additional) S-PCS systems, to be brought into operation before January 1, 2001, into the European frequency table with the same priority as the S-PCS systems already included in the European frequency table;**
- The CEPT Regulatory Framework for S-PCS systems would be reviewed at least every two years after the adoption of the framework on 30 June 1997.
- **These periodic reviews are for the purpose of allowing the process to take into account, inter alia, new S-PCS systems to be brought into operation beyond January 1, 2001.**

Further provisions of the European Regulatory Framework relating to 2 GHz S-PCS systems were agreed with participating industry, including the companies noted above. These agreed provisions for the 2 GHz bands include the following:

- Designation of the entire 2 x 30 MHz bands (i.e. 1980 – 2010 MHz and 2170 – 2200 MHz allocated for MSS in Region 1 by the Radio Regulations of the ITU) for S-PCS/satellite component of IMT – 2000/UMTS use;
- Provisions to facilitate access to the upper 2 x 15 MHz of the above bands for those S-PCS systems being brought into operation before January 1, 2001 and meeting the relevant milestones;
- Dates for the phased transition of fixed service systems, operating in the above 2 GHz S-PCS bands, to facilitate the introduction of S-PCS systems;

These provisions of the European Regulatory Framework would allow for further review of access to the lower 2 x 15 MHz band segments of the 2 GHz MSS allocations, which are presently not provisionally identified to any S-PCS system, at an appropriate future stage.

**PROPOSAL FOR INTEGRATED LICENSING -TRANSITIONING SOLUTION FOR MSS
ENTRANTS AND TERRESTRIAL WIRELESS INCUMBENTS IN THE 2 GHz BAND.**

February 25, 1999

- A. Permit expeditious entry into the US marketplace by new entrant 2 GHz MSS operators.
 - New entrants that are ready to enter the market should not be delayed by unnecessary and prolonged negotiations that could be impeded by competitors and/or paper systems.
 - Issue conditional authorizations requiring intersystem coordination with other and later entrants.
 -
- B. Promote efficient use of the spectrum by authorizing only those 2 GHz applicants that are commercially and technically viable.
 - Avoid encouraging global precedents for authorizing paper systems
- C. Assure access for later entering MSS operators.
 - Assure a minimum amount of unassigned spectrum for a later conditionally-authorized entrant that meets measurable milestones including a "1 year from launch" milestone. (This important assurance would be developed through the FCC's NPRM comment process)
 - Obligate earlier entering MSS providers to coordinate with later entering MSS providers that have satisfied milestones.
- D. Allow for maximum flexibility in spectrum assignment.
 - Require MSS systems to have sufficient frequency agility to allow band plan changes as practical over time – i.e. as usage increases and spectrum is cleared.
 - Conditionally license non-geo MSS systems across the spectrum band, and conditionally license geo MSS systems within appropriate portions of the Region 2 spectrum band.

- E. Avoid unnecessary relocation of terrestrial wireless incumbents
- Avoid disturbance of incumbents where possible by encouraging 2 GHz operators to initially use least congested spectrum.
 - Avoid premature disturbance of incumbents before spectrum is actually needed by MSS operator.
 - Avoid any disturbance of incumbents by paper MSS systems.
- F. Impose relocation costs on an MSS system only for spectrum it actually uses and cannot share with terrestrial wireless incumbent¹.
- G. Impose a sunset date of January 1, 2005, after which any costs of relocation would be borne by the terrestrial wireless incumbent. Such a sunset date would have provided all incumbents with at least ten years notice of the allocation of the 2 GHz band for MSS use.

¹ It is ICO's position that the costs of transitioning terrestrial wireless incumbents out of global MSS spectrum should be borne by those incumbents under traditional spectrum management practices, and that such costs should not be imposed on global MSS system entrants.